

EXHIBIT “L”

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ORIGINAL

3
4 TINA LINDQUIST,)
5 Plaintiff,)
6 -vs-) No. 04-249E
7 HEIM, L.P.)
8 Defendant.)

9 The videotaped deposition of WILLIAM
10 SWITALSKI called for examination pursuant to Notice
11 and the Rules of Civil Procedure for the United
12 States District Courts pertaining to the taking of
13 depositions, taken before DEANNA AMORE, a notary
14 public within and for the County of Cook and State
15 of Illinois, at 33 North LaSalle Street, Chicago,
16 Illinois, on the 7th day of April, 2006, at the
17 hour of 8:00 a.m.

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19 CSR No.: 084-0003999
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1 you what type of safety mechanisms to have, it
2 basically tells you a minimum standard of what it
3 wants?

4 MR. ROBINSON: Object to the form of that
5 question.

6 THE WITNESS: The standard states that the foot
7 control has to be protected against accidental
8 actuation and specifically must protect against
9 someone stepping onto the pedal which gave rise to
10 the requirement for at least a top shield.

11 ANSI was very specific -- or I should say the
12 code committee that wrote that was very specific
13 about using the word onto the pedal as opposed to
14 into the pedal. They recognized that normal use of
15 the foot control involved stepping into it. So
16 there is no way to prevent someone who accidentally
17 actuates it from stepping into it. So they use the
18 word accidental activation by stepping onto the
19 pedal, in other words, from above again, which gave
20 rise to the top shield.

21 The illustration of an acceptable foot control
22 that's used in the standard shows both a top shield
23 and side shields. It does not show a toe latch.
24 It does not show a front gate.

1 BY MR. HARTMAN:

2 Q. But if it had a toe latch or a front gate
3 and it had the cover to protect you from stepping
4 onto it, it would be an ANSI-approved shield?

5 MR. ROBINSON: Objection -- excuse me -- I will
6 object to the form of the question.

7 THE WITNESS: ANSI does not approve products
8 but it would certainly -- it would certainly
9 include all of the required features. I don't
10 think the committee would exclude the foot control
11 with additional features.

12 BY MR. HARTMAN:

13 Q. I am sorry. So it would be an ANSI, would
14 the term be, acceptable shield then?

15 A. Yes.

16 Q. So -- I am going to show you Exhibit
17 No. 4, which has shields from 1 to No. 12. I would
18 ask you to look at all of those shields.

19 A. All right.

20 Q. Is there any shield that's located in
21 Exhibit 1, 1 through 12 that would not be an
22 ANSI-acceptable shield?

23 A. There is not. There are no uncovered foot
24 switches shown in this publication.

1 BY MR. HARTMAN:

2 Q. Would you agree that with regard to HOOD
3 requirements, hands-out-of-dye, that is directed at
4 the employer as it relates to setting up the
5 machine and the operation; am I correct?

6 A. Oh, absolutely, yes.

7 With the advent of the 2002 press brake
8 standard there was one additional requirement
9 placed on foot switch use that wasn't there in
10 earlier additions. And that is that when safe
11 distance method of safeguarding was used on a press
12 brake, the foot switch also had to be physically
13 anchored into the floor at the safe distance.
14 Prior to that time the foot switch could be placed
15 on the floor at a safe distance; but beginning with
16 2002, it had to be physically anchored to the
17 floor.

18 BY MR. HARTMAN:

19 Q. And that would be a requirement for the
20 employer in the setup of the operation?

21 A. Yes.

22 Q. HOOD is an employer directive with regards
23 to how to operate the press brake?

24 MR. ROBINSON: I will object to the form.

70

1 I don't know if you mean that to be exclusive the
2 way you are saying it or not.

3 MR. HARTMAN: Yes, I do. I mean it to be
4 exclusive.

5 MR. ROBINSON: Object to form.

6 THE WITNESS: Can I hear the question again,
7 please?

8 BY MR. HARTMAN:

9 Q. Am I correct that HOOD are instructions
10 directed to the employer as to how to set up the
11 press brake?

12 A. Yes, it is something that only the
13 employer is in a position to carry out. I will
14 certainly go along with that, yes.

15 Q. The operator isn't the one to set up the
16 HOOD procedure, it is the employer and the setup
17 individual?

18 MR. ROBINSON: I will object to the form of the
19 question.

20 THE WITNESS: Certainly the operator can. In
21 most press shops, it is somebody that ranks above
22 the press operator is supposed to control that and
23 supervise it.

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71

1 Q. And there is a difference between a foot
2 pedal and foot control?

3 A. Yes.

4 Q. Would you tell us what the difference is
5 to your understanding?

6 A. The code committee drew the distinction
7 when they drafted the definition of these terms.
8 To try and simplify it as much as I can, the foot
9 pedal refers to the older style mechanical lever
10 that one would push down with their foot whereas
11 foot control is making reference to a, perhaps an
12 electric foot control or a pneumatic air-operated
13 foot control that isn't -- doesn't have the
14 mechanical attachment to the press brake.

15 Q. Okay. And on a foot pedal when it is
16 attached to a press brake, the mandate is that it
17 shall be protected against inadvertent activation,
18 correct?

19 A. Yes.

20 MR. ROBINSON: I will object to the form of the
21 question.

22 BY MR. HARTMAN:

23 Q. Well, there is a different standard for a
24 foot pedal as opposed to a foot control; am

1 I correct?

2 A. Yes.

3 Q. And when you have a foot pedal attached to
4 the press brake, it must be protected from
5 inadvertent activation?

6 A. Yes, and in fact I think the same is true
7 for both foot pedal and foot control. There are
8 inadvertent actuation requirements placed on both
9 styles.

10 Q. Well, I believe that foot controls require
11 that shall be protected so as to inhibit accidental
12 actuation on a foot control; am I correct?

13 Do you want to look at the standard?

14 A. Sure.

15 MR. ROBINSON: Object to the form of the
16 question.

17 MR. HARTMAN: Okay.

18 THE WITNESS: I think I found what confirms
19 what I was saying, both the foot control as well as
20 the foot pedal both have --

21 MR. ROBINSON: Let him finish.

22 Go ahead.

23 THE WITNESS: -- both have requirements for
24 preventing, minimizing, however you care to say it,

85

1 THE VIDEOGRAPHER: Off the record at 10:00 a.m.

2 (A short break was taken.)

3 THE VIDEOGRAPHER: This is the beginning of

4 Tape No. 2. Back on the record at 10:13 a.m.

5 BY MR. HARTMAN:

6 Q. Now, I asked you -- we started and got off
7 the track a little bit with regard to ANSI. But
8 with regard to the 1973 standard, would you read
9 the section as it relates to foot controls as
10 opposed to foot pedals? And I am asking you to
11 read the standard.

12 A. Yes.

13 Okay. Foot control, actuation prevention
14 is Section 4.2.4.2.4 of the standard and it reads,
15 the foot control shall be protected so as to
16 inhibit accidental actuation by falling or moving
17 objects or by someone stepping on it. Means shall
18 be provided for manually locking the foot control
19 to inhibit such accidental actuation.

20 Q. Now, am I correct that with regard to foot
21 controls, it talks about inhibit accidental
22 actuation and with regard to a foot pedal it talks
23 about prevent accidental activation?

24 A. Yes.

1 Q. There is a difference, would you agree?

2 A. Yes.

3 Q. What is your understanding of -- as to the
4 difference as it relates to the ANSI standard on
5 foot pedal as opposed to foot control?

6 A. With regard to the foot pedal, accidental
7 actuation can be prevented because the older style
8 mechanical foot pedal could physically be removed
9 from the machine or there would be a built-in latch
10 or otherwise that physically prevented the downward
11 depression of the pedals.

12 With the foot control it is asking that
13 accidental actuation be inhibited. I think the
14 committee recognizes that you cannot prevent
15 actuation of the control when the normal, the
16 normal way of activating the control was also the
17 way one would accidentally activate the controls.
18 It can't be prevented but features can be added to
19 try and inhibit or to decrease the likelihood of
20 the accidental actuation.

21 Q. So when you have a foot pedal in the
22 normal use of the machine with a foot pedal, there
23 are means by which you could prevent the operator
24 from accidentally activating the foot pedal?

1 A. Yes, as I said, it amounts to the physical
2 removal of the pedal from the machine when you
3 are -- when you are not operating.

4 Q. Well, how about during the operation of
5 the foot -- of the press brake with the foot pedal,
6 can you prevent accidental activation of the foot
7 pedal under those circumstances?

8 A. No, you can't.

9 Q. You cannot?

10 A. No, you can't.

11 Q. Now in 1973 do you know what mechanisms
12 were available by the foot control manufacturers
13 that would -- that could be used to prevent or
14 inhibit inadvertent activation of the pedal?

15 MR. ROBINSON: I will object to the form of the
16 question. You have included prevent and inhibit,
17 which is contrary to I think the testimony that was
18 just given.

19 MR. HARTMAN: I am sorry.

20 BY MR. HARTMAN:

21 Q. Okay. In 1973 do you know what foot
22 controls were available that would inhibit
23 accidental activation of the foot control?

24 A. Yes, I think we have already touched on

1 every one of these features, the top guard, the
2 side guards. I think Linemaster alone has the toe
3 latch, and eventually all of the major foot switch
4 manufacturers came out with some form of a front
5 gate.

6 Q. And the front gate was available in 1973
7 as well?

8 MR. ROBINSON: I am going to object -- is that
9 a question or is that just a statement?

10 BY MR. HARTMAN:

11 Q. Do you agree with that statement?

12 A. It was certainly available with some
13 manufacturers. I don't know the specific date that
14 all of the different manufacturers came out with
15 their version of front gate is unknown to me.

16 Q. But in 1973 the front gate was available
17 on foot controls by some manufacturers?

18 MR. ROBINSON: Object to the form. I will
19 object to the form of that question.

20 THE WITNESS: Yes.

21 BY MR. HARTMAN:

22 Q. And in 1977, 1978, the front gate was
23 available on a foot control manufactured by
24 Linemaster; am I correct?

1 A. Yes.

2 Q. And a foot control with a front gate would
3 be approved by ANSI, that ANSI standard that you
4 just read?

5 MR. ROBINSON: I will object. This has been
6 asked and answered. He said they don't approve for
7 certain things. All of this has been asked and
8 answered. You are now trying to get what you
9 couldn't get before from his answers into a quick,
10 well, let me just say it again, maybe he will say
11 yes. It is inappropriate.

12 MR. HARTMAN: I am not trying to do that.

13 MR. ROBINSON: That's the result that gets
14 reached if there is an answer that's inconsistent
15 with what he has already answered on. So let's
16 please ask some new questions.

17 MR. HARTMAN: Paul, I will ask whatever
18 questions I feel like asking. And if you have a
19 problem with my question -- every time you have
20 asked me to rephrase something, if the witness
21 hasn't understood it, I am more than willing to do
22 it. This is not about the sharp practice of law.
23 This is trying to find out --

24 MR. ROBINSON: Well, you and I disagree on the

1 THE WITNESS: Style of machine is good.
2 Individual press brakes are better. If the
3 manufacturer of the machine tool knows more detail
4 about the customer's application, then it is better
5 still.

6 BY MR. HARTMAN:

7 Q. With regard to providing a pedal as
8 standard equipment with a press brake, would you
9 agree it would be best to understand, make an
10 individual determination with regard to the
11 particular press brake?

12 MR. ROBINSON: Objection to the form.

13 THE WITNESS: Yes, generally the more
14 information the machine tool manufacturer has, the
15 better position they are in to select the best foot
16 control.

17 BY MR. HARTMAN:

18 Q. There would be a different analysis with
19 regard to a multi-purpose press brake than one
20 would have as opposed to a multi-purpose punch
21 press; am I correct?

22 MR. ROBINSON: Objection to the form.

23 THE WITNESS: Both machines being multi-purpose
24 in nature makes the distinction very difficult

1 because the machine tool manufacturer simply isn't
2 going to know enough about all the different
3 purposes that either form of machine are going to
4 be put to to select one type of foot switch over
5 another.

6 BY MR. HARTMAN:

7 Q. Well, if they are providing a foot switch
8 as standard equipment, wouldn't it be the
9 manufacturer's job to provide a foot switch that
10 provides the most protection for the highest number
11 of applications?

12 MR. ROBINSON: Let me object to the form of the
13 question. It is misleading. It also ignores his
14 last statement and his last answer to the question
15 where he explained to you why the distinction would
16 not be there that you want to be there.

17 MR. HARTMAN: I don't think he said that.
18 I think you are mischaracterizing his testimony.

19 MR. ROBINSON: You can suggest whatever you
20 want but the record is the record.

21 MR. HARTMAN: Right. I said I think
22 I understand and heard something different.

23 THE WITNESS: It is certainly desirable but
24 when we preface a machine as being multi-purpose,

106

1 it is virtually impossible for the machine tool
2 manufacturer to make a selection because the
3 ultimate use, the type, size, style of parts being
4 manufactured is simply not going to be known.

5 BY MR. HARTMAN:

6 Q. So am I correct that it is your testimony
7 today that it is impossible to make the selection
8 of the best foot control for -- the safest foot
9 control for a multi-purpose machine by the
10 manufacturer?

11 MR. ROBINSON: I will object to the form of the
12 question.

13 THE WITNESS: It is -- it is not impossible but
14 it is something the manufacturer is going to have
15 to do based on prior experience with similar
16 machines rather than anticipated future use of the
17 machine they are selling.

18 BY MR. HARTMAN:

19 Q. What does that mean?

20 A. Well, when you have a multi-purpose
21 machine --

22 Q. Let's talk about a multi-purpose press
23 brake.

24 A. Okay. What the machine tool manufacturer

107

1 is going to know is --

2 MR. ROBINSON: Hold on. I didn't make an
3 objection before. The implication that has just
4 been made by reference to the press brake suggests
5 that there is a distinction when the witness has
6 already indicated there wouldn't be a distinction
7 for multi-purpose power presses, mechanical power
8 presses versus mechanical press brakes. So the
9 question as phrased suggests that there is. And
10 the answer now being given only relates to press
11 brake. I think that is very misleading.

12 BY MR. HARTMAN:

13 Q. Sir, I think Mr. Robinson is suggesting
14 that you testify a particular way. My
15 understanding is that you said there would be
16 distinctions based on a machine-by-machine basis.
17 If you get down to the individual machines, there
18 would be a distinction with regard to types of
19 machine and then there would be a distinction --
20 meaning press brake versus punch presses, and then
21 there would be a further distinction with regard to
22 the types of uses the manufacturer knew. So there
23 are multiple distinctions in this decision-making
24 tree; is there not?

108

1 MR. ROBINSON: Hold on. Objection to the form.
2 You threw a lot of things in there that were not
3 stated. I think you indicated different uses of
4 the manufacturers as opposed to uses by the
5 end-user? Very misleading.

6 MR. HARTMAN: Would you read the question?

7 MR. ROBINSON: You trailed off some but
8 I thought I heard manufacturer. Would you read
9 that question back?

10 (Whereupon, the record was
11 read.)

12 MR. ROBINSON: Objection, compound, misstates
13 prior testimony and misleading.

14 BY MR. HARTMAN:

15 Q. Do you understand that question, sir?

16 A. I think so.

17 Q. Okay.

18 A. When the press brake manufacturer decides
19 to include a foot switch, what they have at their
20 disposal for making that decision is prior
21 experience with all the press brakes they have sold
22 in the past. And they make a selection of a foot
23 switch based on that prior experience because the
24 press brake is a multi-functional machine by its

1 Q. OSHA does not govern manufacturer conduct,
2 manufacturer's conduct; am I correct?

3 A. Only as far as manufacturing operations
4 within a manufacturer's plant would go.

5 Q. So OSHA is not applicable to Heim in the
6 way it designs the press brake involved in this
7 case; am I correct?

8 MR. ROBINSON: Objection to the form of the
9 question.

10 THE WITNESS: Correct.

11 BY MR. HARTMAN:

12 Q. Do you understand what my question was,
13 sir?

14 A. I think so.

15 Q. Tell me what your understanding was of my
16 question so we can clarify the record.

17 MR. ROBINSON: Please don't get confused. When
18 I object to form, that doesn't mean that I don't
19 understand it or that he doesn't understand it.
20 I think it can be interpreted in various different
21 ways. Actually, there are a number of different
22 form objections, so don't assume that means that
23 I thought that he didn't understand it. I don't
24 want you to waste your time going through that.

115

1 THE WITNESS: Yes.

2 BY MR. HARTMAN:

3 Q. Let me ask it.

4 A. Including the foot switch selection.

5 Q. So am I correct that OSHA does not govern
6 how Heim designs its products and the foot
7 selection process?

8 A. Yes, that's also my understanding.

9 Q. Thank you.

10 Would you agree that exceeding as it
11 relates to the foot controls, that if you exceed
12 the ANSI requirements of foot controls included
13 with the press brakes, that that's a good thing?

14 MR. ROBINSON: Objection to the form of the
15 question. Very broad, it doesn't have any
16 limitations.

17 BY MR. HARTMAN:

18 Q. You can answer.

19 A. I think any manufacturer is free to try
20 and exceed regulatory requirements when it is
21 possible to exceed them. The requirements simply
22 establish what is reasonably safe. There is no
23 prohibition against trying to do better.

24 Q. Would you agree that that's a good thing

119

1 A. Yes, and the other were side guards.

2 Q. And side guards. Okay. I should have
3 said the full cover. When I said cover, I thought
4 a cover was side guards included but okay.
5 I wasn't trying to mislead you.

6 Do you know whether or not the toe latch
7 provides protection from riding the pedal? And it
8 is if you know, sir.

9 MR. ROBINSON: I am not sure what that means.
10 If he has an opinion on it then --

11 THE WITNESS: I think in some instances it does
12 and in some instances it does not. If the operator
13 rides the pedal in such a way that the foot is kept
14 fully inserted into the foot switch housing, it
15 does not provide protection against riding the
16 pedal. If the operator keeps their foot partially
17 inserted into the foot switch housing, then the
18 latch will in effect latch the pedal in the
19 unactivated position and provide protection against
20 riding the pedal.

21 BY MR. HARTMAN:

22 Q. Your next paragraph says the 2002 safety
23 standard for press brakes additionally recognizes
24 the hazard associated with unattended actuation of

1 the foot operating means; am I correct?

2 A. Yes.

3 Q. Is that an accurate statement?

4 A. Yes.

5 Q. Was that hazard also known in 1978?

6 MR. ROBINSON: Objection to the form.

7 THE WITNESS: I believe it was, yes.

8 BY MR. HARTMAN:

9 Q. With the adoption -- strike that.

10 In 1973 was it known to the industry as a
11 whole that there was a hazard associated with the
12 unintended actuation of the foot operating means?

13 MR. ROBINSON: Objection to the form.

14 THE WITNESS: I am sorry. Was it known to who?

15 BY MR. HARTMAN:

16 Q. Industrywide.

17 A. Industrywide?

18 I don't know I wasn't around in 1978 what
19 the industry knew or didn't know. What I do know
20 is when the safety standard addressed the need or a
21 requirement to have a supervisory key selector
22 switch between hand and foot and that was in 2002.

23 Q. Do you know of whether or not there is a
24 hazard associated with accidental activation of a

1 foot control in conjunction with the use of a press
2 brake?

3 MR. ROBINSON: Objection to the form.

4 THE WITNESS: Can I hear that question once
5 more, please?

6 (Whereupon, the record was
7 read.)

8 THE WITNESS: Yes, there is a hazard associated
9 with accidental activation of any kind of control
10 including foot controls; and it doesn't matter what
11 kind of machine it is associated with.

12 BY MR. HARTMAN:

13 Q. And how long have you known that?

14 A. Probably most of my life. I can't put a
15 specific time or date on it. It seems like a
16 rather obvious statement.

17 Q. Okay. So it is almost an intuitive
18 statement to you?

19 A. Yes.

20 Q. When did you graduate college?

21 A. 1980 the first time.

22 Q. When you graduated college, did you know
23 that there was a hazard associated with the
24 unintended activation of a machine?

1 A. I suspect I did.

2 Q. It is my understanding that there are two
3 general classifications of people that will work on
4 press brakes. One is a setup individual and one is
5 an operator; am I correct?

6 MR. ROBINSON: Objection to the form.

7 THE WITNESS: Larger press shops will also have
8 a maintenance department but very -- setup is
9 considered a subset of maintenance. So if we say
10 maintenance and operation, I go with you a hundred
11 percent.

12 BY MR. HARTMAN:

13 Q. How about if we go maintenance, setup and
14 operator; is that easier?

15 A. That's fine.

16 Q. Do you have an opinion as to whether or
17 not a press brake manufacturer has an obligation to
18 manufacture the press brake so as to protect all
19 three individuals, types of individuals that will
20 come in contact with the machine?

21 MR. ROBINSON: Objection to the form, asked and
22 answered.

23 THE WITNESS: I think basically the same
24 regulations that apply to the press operator also

137

1 apply to setup and maintenance personnel. However,
2 because the setup and maintenance personnel because
3 of the nature of what they are doing, have to have
4 their hands in the dye area because they are the
5 ones installing and removing the dyes, there is a
6 little bit higher degree of care that one has to
7 exercise to protect themselves.

8 BY MR. HARTMAN:

9 Q. But the machine manufacturer's
10 responsibilities to your understanding extend to
11 the setup individual, the maintenance man and the
12 operator to the extent the machine operator -- the
13 machine manufacturer has responsibility?

14 MR. ROBINSON: Objection to the form.

15 THE WITNESS: Yes.

16 BY MR. HARTMAN:

17 Q. Now, am I correct that with regard to
18 press brakes, it is foreseeable that operators will
19 have their hands in the dye area?

20 MR. ROBINSON: Objection to the form.

21 THE WITNESS: Yes, I think there is a pattern
22 of operators reaching into the dye space or point
23 of operation.

24

1 BY MR. HARTMAN:

2 Q. In fact some of the operator protective
3 systems are designed so that while a worker's hands
4 are in a dye area, if the dye begins closing,
5 mechanically their hands are removed from that
6 area; am I correct?

7 A. Yes, I believe you are referring to the
8 pull-back or pull-out device.

9 Q. A present sensing device would work in a
10 way that would allow a worker to put their hand in
11 the dye area, do some work and remove it before the
12 machine could be activated; am I correct?

13 A. That's correct. The present sensing
14 device, however, does not have the ability to pull
15 the hands out.

16 Q. Correct, correct.

17 I would refer you to your report on
18 page 6, please, first full paragraph beginning with
19 the fourth line down it says, as OSHA 3170 has
20 correctly pointed out, the electric foot control
21 works best when the operator is in a sitting
22 position. Did I accurately read your report?

23 A. Yes.

24 Q. Would it be a correct statement to say

1 that the sitting position is the best position for
2 which an operator should utilize a foot control?

3 MR. ROBINSON: Object to the form.

4 THE WITNESS: It is not necessarily the best.
5 It is certainly an acceptable means of using a foot
6 control. But if balance is the concern -- and
7 I think balance is something that Professor Barnett
8 focused on in his report -- then sitting is the
9 best.

10 BY MR. HARTMAN:

11 Q. So if Ms. Lindquist was operating the
12 press brake at the time of her injury by sitting
13 down with the foot control by her side, that is not
14 something that you would find fault with?

15 MR. ROBINSON: Object to the form.

16 THE WITNESS: I would not.

17 BY MR. HARTMAN:

18 Q. And your next sentence says, the sitting
19 position all but eliminates the problem of
20 balancing one's self on one foot and reduces the
21 physical fatigue associated with high pedal
22 activation forces and large pedal movements,
23 correct?

24 A. Yes.

1 Q. Do you agree with that statement?

2 A. Yes, of course, I wrote it.

3 Q. Sometimes experts in my experience have
4 had changes or misstated or misread something or
5 have found something, I am just clarifying your
6 status as of today. I am not implying that you
7 should. I just want to make sure we know what the
8 status of your opinions are as of today.

9 A. Okay. Understood.

10 Q. Your next sentence says, the electric foot
11 control can also be utilized by standing as well as
12 a seated operator; am I correct?

13 A. Yes.

14 Q. So am I correct if Ms. Lindquist was using
15 the foot pedal and it had by her side when she was
16 working on her machine on the day of the accident,
17 the fact she was standing and using the foot pedal
18 would not be a problem to you?

19 MR. ROBINSON: Objection to the form.

20 THE WITNESS: No.

21 BY MR. HARTMAN:

22 Q. Okay. Your next paragraph says, there are
23 acceptable applications for both the electric foot
24 controls as well as the mechanical foot pedal.

141

1 co-employee's depositions?

2 A. Yes, I have.

3 Q. Is there anything that you have read in
4 any of the co-employee's depositions that led you
5 to believe that Ms. Lindquist was a setup person?

6 MR. ROBINSON: Object to the form. I don't
7 know how you are referencing setup. It seems you
8 are attempting to include the ability to move the
9 switch from two palm to foot control in setup.
10 I think that is misleading the way it is asked.

11 BY MR. HARTMAN:

12 Q. Is it my leading the way I asked it?

13 MR. ROBINSON: I didn't say he thought it was
14 misleading.

15 MR. HARTMAN: I think the --

16 THE WITNESS: The answer to the question you
17 asked me is no.

18 BY MR. HARTMAN:

19 Q. No, there is nothing that you have read
20 that indicates Ms. Lindquist was a setup person,
21 correct?

22 A. Correct.

23 Q. Is there anything that you have read that
24 leads you to believe Ms. Lindquist could make the

1 decision to utilize the key function to switch the
2 machine from foot control to two palm button
3 switch?

4 A. I believe she testified she wasn't even
5 aware of the existence of the key. So she is not
6 in a position to make that decision.

7 Q. Is there anything that you have read about
8 Ms. Lindquist's ability and decision-making process
9 that would lead you to believe that she should be
10 entitled to make that decision as to utilize the
11 supervisory switch to make a change from foot
12 control to two palm button switch?

13 A. Not unless she was a -- qualified to
14 participate in setup of the press, she is not the
15 one that's supposed to be making the decision.

16 Q. And I appreciate that. Is there anything
17 that you read that indicated that she was qualified
18 to be that person?

19 A. No.

20 Q. I need to see those three articles,
21 please, wherever they are.

22 A. Right here.

23 MR. ROBINSON: Make sure we keep those
24 separate.

1 riding the pedal with a foot cover is mitigated by
2 the trip latch?

3 MR. ROBINSON: Objection to the form.

4 THE WITNESS: I think I responded to a question
5 earlier about how the toe latch addresses some
6 riding-the-pedal scenarios, and it had to do with
7 how far the operator's foot is inserted into the
8 switch. So, again, I think I am basically going to
9 give the same answer.

10 Yes, it does help to mitigate
11 riding-the-pedal-type accidents because it does
12 prevent those that are associated with the
13 operator's foot not being inserted fully into the
14 foot switch.

15 BY MR. HARTMAN:

16 Q. You state next that individual designers
17 and manufacturers should not adopt a safety device
18 that creates a new hazard, correct?

19 A. Yes.

20 Q. And those examples when a downside exists
21 with the use of a safety device, a value system
22 must weigh the upside and downside effect of the
23 particular safeguarding system, correct?

24 A. Yes.

1 Q. Is that a reasonable value system?

2 A. Yes.

3 Q. Is that a value system that you have ever
4 used?

5 A. I don't know that I have been in the
6 position to have to choose whether or not to
7 include a new proposed safety device other than in
8 the framework of litigation matters like we are
9 doing here today.

10 But, yes, I would say I have used it
11 because in effect that's what I am doing with
12 regard to the front gate that Barnett is proposing
13 for press brake foot controls.

14 BY MR. HARTMAN:

15 Q. Okay. What is the cost of the front gate?

16 A. I don't know.

17 Q. No. I am saying what is the cost that you
18 factored in?

19 A. What is the cost -- I haven't factored in
20 any cost.

21 Q. Okay. What is the benefit of the front
22 gate?

23 A. The benefit of the front gate is that it
24 will reduce the likelihood of inadvertently

1 stepping into a foot control.

2 Q. Okay. On page 9, Item No. 2, the last
3 sentence of your report, you indicate it is not
4 possible to prevent someone from inadvertently
5 stepping into the pedal when the intended use of
6 the pedal involves stepping on it. This holds true
7 for the proposed front gate. Its use is not a
8 guarantee that an inadvertent activation will not
9 or cannot occur.

10 Would I be correct in indicating that
11 there is no guarantee with any safety device that
12 injury will not occur?

13 A. Yes, that is true. And I think it is
14 especially true for the foot switch gate because
15 intending to activate the foot switch involves in
16 effect getting past that gate.

17 Q. But if you are not intending to activate
18 the foot switch and somehow your foot gets in
19 there, the gate does protect you if there is no
20 intent?

21 MR. ROBINSON: I will object to the form.

22 THE WITNESS: If you are not intending to
23 activate the foot switch and your foot gets in,
24 then by definition the gate hasn't protected you.

170

1 provides that are not found on a foot pedal are
2 contained in paragraph 6.

3 BY MR. HARTMAN:

4 Q. Am I correct, sir?

5 A. Yes, I tried to be all-inclusive in
6 paragraph 6; and I see I have included the safe
7 distance, the ability for the operator to be
8 seated, the reduction of operator fatigue and the
9 reduction in the need for an operator to stand
10 balanced on one leg are all safety features
11 associated with the foot control that are not
12 common to the older foot pedal.

13 BY MR. HARTMAN:

14 Q. Right. That's the difference between a
15 foot control and a foot pedal as it relates to
16 safety is in paragraph 6?

17 MR. ROBINSON: I will object to the form of
18 that question.

19 THE WITNESS: Yes.

20 BY MR. HARTMAN:

21 Q. Sir, if -- I want you to assume for me
22 that Ms. Lindquist was not riding the pedal and did
23 not intend to activate the foot pedal at the time
24 of her accident.

1 A. Well, I certainly agree that she did not
2 intend to activate it.

3 Q. Would you agree that if there was a gate
4 on the foot control and her foot was outside of the
5 foot control at the time of this unintended
6 activation and the gate worked as it was expected
7 to, meaning preventing her foot from going into the
8 foot control, that this accident would not have
9 occurred?

10 MR. ROBINSON: I object to the form of the
11 question and the hypothetical.

12 THE WITNESS: The gate is not designed to
13 prevent her foot from getting into the foot
14 control. It is specifically designed to allow an
15 operator to get their foot into the foot control
16 otherwise the foot control is a useless piece of
17 equipment. So, no, it is not -- the presence of a
18 gate on that foot control does not guarantee that
19 this accident would not have happened.

20 BY MR. HARTMAN:

21 Q. I am not asking that.

22 Would you agree that a gate is intended to
23 prevent unintended activation of the foot control?

24 A. That's the only reason the gate is there,

176

1 was not -- that she was riding the foot pedal.

2 I guess the only reason a suspicion to the
3 contrary may remain in my mind is that no
4 explanation was ever offered or given as to how the
5 inadvertent actuation took place.

6 Q. Would you expect that someone who loses
7 eight of her, all eight of her fingers in a machine
8 would know how the activation took place?

9 MR. ROBINSON: I will object to the form of
10 that question. That's quite improper. You are
11 asking him to speculate as to what she would know.

12 THE WITNESS: I guess I investigated enough
13 injuries to know that sometimes there is total
14 amnesia on the part of the victim. Certainly this
15 injury is extremely traumatic; and I guess, no,
16 I wouldn't be surprised that Mrs. Lindquist would
17 be unable to determine how her foot contacted the
18 pedal. And again simply because no explanation has
19 been offered as to how the inadvertent activation
20 took place at least leaves some suspicion in my
21 mind with regard to whether there was riding the
22 pedal going on.

23 BY MR. HARTMAN:

24 Q. You have -- you are aware that there is

1 nothing mechanically wrong with regard to the press
2 brake, correct?

3 A. Correct.

4 Q. Okay. And would you agree that this
5 accident occurred by use of the foot control?

6 MR. ROBINSON: I will object to the form of
7 that question.

8 BY MR. HARTMAN:

9 Q. By activation of the foot control?

10 A. Yes, there was no other activation means
11 that anyone has identified to cause the press to
12 cycle.

13 Q. So your opinions and your -- strike that.
14 Your investigation of this accident leads
15 you to believe that there was activation of the
16 machine by the foot pedal that caused this
17 accident?

18 A. Yes.

19 MR. HARTMAN: Can we go off the record for a
20 minute?

21 THE VIDEOGRAPHER: Off the record at 12:01 p.m.

22 (A short break was taken.)

23 THE VIDEOGRAPHER: This is the beginning of
24 Tape No. 3. Back on the record at 12:06 p.m.

179

1 Q. But Heim would be the expert in selecting
2 the foot pedal that would be standard equipment
3 with its press brake?

4 MR. ROBINSON: Objection to the form of the
5 question.

6 THE WITNESS: Yes.

7 MR. HARTMAN: Sir, thank you for your time.
8 I have no further questions.

9 EXAMINATION

10 BY MR. ROBINSON:

11 Q. Sir, would the end-user be in the best
12 position to select a foot control for a press
13 brake?

14 A. Yes.

15 Q. And was that a conclusion reached in
16 Professor Barnett's Exhibit 4, Foot Controls:
17 Riding the Pedal in No. 9 where he lays out the
18 factors that Professor Barnett yesterday indicated
19 that on a number of them would be known by the
20 end-user?

21 A. Yes, I think he neatly summarizes many of
22 the different factors that go into foot pedal
23 selection; and the machine tool manufacturer is
24 just not in a position to know things that are

EXHIBIT “M”

IN THE U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF PA

* * * * *

TINA LINDQUIST,

Plaintiff

vs.

HEIM L.P.,

Defendant

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Case No.

04-249E

COP

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DEPOSITION OF

GARY DIETZ

JULY 21, 2005

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1 A. Yes.

2 Q. And how do you know that?

3 A. I was there.

4 Q. You were working at the time of
5 her accident; were you not?

6 A. Yes, I was.

7 Q. And how far away were you when
8 the accident happened?

9 A. Approximately 30 feet.

10 Q. Who made the decision to use the
11 foot switch for activating this press
12 brake at the time that Tina Lindquist
13 was injured?

14 A. It would be the set-up person.

15 Q. Bob Rooney?

16 A. Yes.

17 Q. And did Bob Rooney have
18 authority then to decide which safety
19 device would be used for any particular
20 process of the press?

21 A. Which press?

22 Q. This particular one. Did he
23 have that authority to decide which
24 safety device to use?

25 A. Yes. I would say at that time